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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/699,985
Filing Date: November 03, 2003
Appellant(s): OSTROMEK ET AL.

_____

Thomas Kelton (Reg. No. 54,214)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/09/2008 appealing from the Office action

mailed 7/02/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 4,462,046	SPIGHT	6-1984
US 7,187,810 B2	CLUNE ET AL.	3-2007
US 5,537,669	EVANS ET AL.	7-1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims and

appear in the Final Rejection dated 7/02/2008 (repeated below for convenience):

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

2.   Claim 1-2, 4-6, 8-9, 11-13, and 15-18 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Spight et al (US 4,462,046, as applied in previous Office

Action) in view of Clune et al (US 7,187,810 B2, as applied in previous Office Action).

Re Claim 1: Spight discloses a method / machine vision system for processing image

information (see Fig. 1, title of invention, col. 1, lines 46-49 and 67-68), comprising

receiving light / incoherent light signals (11, 13) or coherent light signals (o(x,y) and

r(x,y)) comprising image information / scene information (see Fig. 1, col. 2, lines 35-57,

col. 4, lines 27-28 and 44-45); performing a first optical transform / Fourier Transform

via an optical lens system (30) on the light to yield a first optically transformed light /

Fo(x,y) (see Fig. 1, col. 2, lines 50-57, col. 4, lines 27-37); performing a second optical

transform / Fourier Transform via an optical lens system (32) on the light to yield a

second optically transformed light / IR(x,y) (see Fig. 1, col. 2, lines 50-57, col. 4, lines

43-50); processing the first metric and the second metric to yield a processed metric /

square sum of IR(x,y) and Fo(x,y) (see Fig. 1, col. 2, lines 50-64, col. 4, lines 56-63, col.

5, lines 2-19); and performing an inverse optical transform / Inverse Fourier Transform

via an optical lens system (36) on the processed metric to process the image

information of the light (see Fig. 1, col. 2, lines 64-68, col. 3, lines 1-6, col. 4, lines 42-

48), generating an image from the processed metric (see col. 2, line 68, col. 3, lines 1-

6); and displaying / monitor (200, 40) the image (see Figs. 1 and 4, col. 3, lines 1-6).

       However, Spight does not specifically disclose generating the first metric in

accordance with the first optically transformed light and generating the second metric in

accordance with the second optically transformed light.

       Clune discloses generating the first metric / Fi(u,v) 2D data array matrix (262) in

accordance with the first optically transformed light / Fast Fourier Transform FFT (260)

[Spight teaches the first optical transformed light which is similar to Clune's first digital

Fast Fourier Transform FFT] and generating the second metric / Fj(u,v) 2D data array

matrix (276) in accordance with the second optically transformed light / Fast Fourier

Transform FFT (274) [Spight teaches the second optical transformed light which is

similar to Clune's second digital Fast Fourier Transform FFT] (see Clune, Figs. 2A and

2B-2, col. 11, lines 40-67, col. 12, lines 1-29). Clune also yields a processed metric

(278) from the first (262) and second (276) metric and performs an inverse transform

(280) [Spight teaches the inverse optical transform which is similar to Clune's digital

Inverse Fast Fourier Transform iFFT] on the processed metric (278) similar to Spight

(see Clune, Figs. 2A and 2B-2, col. 11, lines 40-67, col. 12, lines 1-29).

       Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to modify Spight's method by using Clune's teachings by

including a first and second metric generator between Spight's optical transform and

Spight's yield processor in order to display the image after being transformed to improve

the validation for the correction of a misalignment between at least two images/signals

(see Clune, Figs. 2A and 2B-2, col. 5, lines 63-67).

Re Claim 2: Spight further discloses the first optical transform / Fourier Transform via an

optical lens system (30) is substantially similar to the second optical transform / Fourier

Transform via an optical lens system (32) (see Fig. 1, col. 2, lines 54-57, both the

optical lens systems perform Fourier transform).

Re Claim 4: Spight further discloses the first optical transform comprises a first Fourier

transform / Fourier Transform via an optical lens system (30); and the second optical

transform comprises a second Fourier transform / Fourier Transform via an optical lens

system (32) (see Fig. 1, col. 2, lines 54-57, both the optical lens systems perform

Fourier transform).

Re Claim 5: Spight further discloses selecting first data / $Fo(x,y)$ from the first metric;

selecting second data / $IR(x,y)$ from the second metric; and fusing / square sum of

$IR(x,y)$ and $Fo(x,y)$ the first data and the second data to yield the processed metric /

square sum of $IR(x,y)$ and $Fo(x,y)$ (see Fig. 1, col. 2, lines 50-64, col. 4, lines 56-63, col.

5, lines 2-19). Clune also further discloses selecting first data / $Fi(u,v)$ from the first

metric (data array of 262), selecting second data / $Fj(u,v)$ from the second metric (data

array of 276); and fusing / cross correlation (278) the first data / Fi(u,v) and the second

data / Fj(u,v) to yield the processed metric / correlated output of 278 (see Clune, Figs.

2A and 2B-2, col. 11, lines 40-67, col. 12, lines 1-29).

Re Claim 6: Clune further discloses generating the processed metric / correlation (218,

278) in response to the first metric (data array of 262) and the second metric (data array

of 276); and detecting a target / measure of misalignment using the processed metric /

correlation (218, 278) (see Clune, Figs. 2A and 2B-2, col. 11, lines 65-67, col. 12, lines

1-11, the cross correlation 278 fuses or correlates [product] the two data array's of 262

and 276 to detect / determine a target / measure of misalignment).

　　　　As to claims 8-9 and 11-13, the claims are the corresponding system claims to

claims 1-2 and 4-6. The discussions are addressed with regard to claims 1-2 and 4-6.

　　　　As to claim 15, the claim is the corresponding means plus function system claim

to claim 1. The discussions are addressed with regard to claim 1. The newly amended

recited limitation "means for reporting results" in claim 15 is understood to be the

displaying means of claim 1 respectively.

　　　　The limitations, as recited in claim 15, "means for receiving light" in line 3,

"means for performing" in lines 5 and 7, "means for generating" in lines 9 and 11,

"means for processing" in line 13, and "means for performing" in line 15, "means for

reporting" in line 16, invoke 35 USC 112, 6th paragraph.

Re Claim 16: The limitation "a procedure selected from the group of a first procedure and a second procedure" is referred to as a Markush group and this Markush group recites choosing either the first procedure or the second procedure to process the first metric and the second metric. Therefore, while considering the first procedure for fusing and considering wherein the first optical transform is substantially similar to the second optical transform, all the limitations respectively are analyzed and taught by Spight, as modified by Clune, in the same manner as Spight, as modified by Clune, taught claims 1-2, 4-6 above.

As to claim 17, the claim is the corresponding system claim to claim 1 respectively. The discussions are addressed with regard to claim 1. To briefly further clarify the teachings of the system components: Spight teaches the first (30, see Spight, Fig. 1) and second (32, see Spight, Fig. 1) optical transformers; Clune teaches the first sensor and first processor (262, see Clune, Fig. 2B-2, 262 senses the transformed data and processes the data into a data matrix array for displaying purposes); Clune teaches the second sensor and second processor (276, see Clune, Fig. 2B-2, 276 senses the transformed data and processes the data into a data matrix array for displaying purposes); Spight and Clune each teach a processor for forming a fused image (34, see Spight, Fig. 1, fusion is done by a summation processor) (278, see Clune, Fig. 2B-2, fusion is done by a correlation processor); Spight and Clune each teach an inverse transformer (36, see Spight, Fig. 1) (280, see Clune, Fig. 2B-2); Spight teaches a display (200, see Spight, Fig. 4).

The result of the Spight and Clune combination would be completely predictable in that this digital type system would still produce a correlation degree between the two signals/images. Furthermore, one skilled in the art would be motivated to utilize this updated computer implemented system because it is more stable and cost effective over an analog type system. The obviousness rationale advanced hereinabove is consistent with the criteria articulated in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007).

Re Claim 18: Spight further discloses wherein said first (30) and second (32) optical transforms are selected from the group consisting of: a Fourier transform / Fourier transform (see Fig. 1, col. 2, lines 54-57, both the optical lens systems perform Fourier transform); and a geometric transform.

3.   Claims 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spight, as modified by Clune, as applied to claims 1 and 8 above, and further in view of Evans et al (US 5,537,669, as applied in previous Office Action). The teachings of Spight as modified by Clune have been discussed above.

Re Claim 3: Spight further discloses the first optical transform / Fourier Transform via an optical lens system (30) is compatibly different from the second optical transform / Fourier Transform via an optical lens system (32) (see Fig. 1, col. 4, lines 33-37).

Although the compatibly different limitation is silent in Spight, it is an inherent feature because each of the two lenses 30 and 32 could have a different focal length making them compatibly different. As discussed in the rejection for claim 3, the Fourier transform lenses 30 and 32 [see Spight, Fig. 1] are compatibly different because no two lenses could be exactly the same, there will always be some type of micro-difference if no bigger difference could be noticed. This little difference between the two Fourier transform lenses 30 and 32 results in two "compatibly different" Fourier transforms. Lens 30 is used as the first optical transform [Fourier Transform via lens] and lens 32 is used as the second compatibly different [lenses compatibly different by structure] optical transform [Fourier Transform via lens].

However, Spight as modified by Clune, don't specifically disclose that the first and second optical transforms each target different aspects of the image information [they teach that the same spectrum is targeted using the same Fourier Transform].

Evans discloses wherein the first transform / Fourier transform (6, see Evans, Fig. 1, col. 4, lines 49-51) is compatibly different from the second transform / Canonical transform (6', see Evans, Fig. 1, col. 4, lines 49-51), such that the first and second transforms each target different aspects / different spectral results of the image information (see Evans, col. 4, lines 49-51, each of the two different transforms produce different spectral results which show that different spectral aspects of the image are targeted) [Spight teaches the first and second optical transform which is similar to Evans first and second digital Fourier-like Transforms].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Spight, as modified by Clune, using Evans' teachings by including to Spight's first and second optical transforms the ability to target and analyze different spectral aspects of the image by using the Canonical and Fourier transforms in order to further improve the misalignment or offsets of the inputted images (see Evans, col. 2, lines 57-64).

As to claim 10, the claim is the corresponding system claim to claim 3. The discussions are addressed with regard to claim 3.

(10) Response to Argument

I.   First Ground of Rejection – Claims 1-2, 4-6, 8-9, 11-13, and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spight in view of Clune.

A. Claims 1, 2 and 4-6

1.   *The Appellant argues*, regarding claim 1 (see Appeal Brief, "Claim 1 recites, in part ..." in page 7 through "In response to Appellant's observations, the Examiner now clarifies ..." in page 8), that the rejection fails to make a plausible argument that Clune teaches or suggests "generating a *first metric* in accordance with the first optically transformed light" and "generating a *second metric* in accordance with the second optically transformed light". The Appellant further

goes into detail in regards to how the Appellant originally understood the rejection to propose placing Clune's steps 210 and 216 into the Spight system after Spight's Fourier transform lenses (items 30 and 32 of FIGURE 1 of Spight) and that the Examiner then responded to the Appellants original understanding by clarifying the rejection by stating that the rejection *really meant* to propose placing "Clune's initial display means 262 and 276 …between Spight's Fourier transform lens and yield processor correlation". So based on this clarification by the Examiner, the Appellant indicates that the rejection does *not assert that light from items 262 and 276 would be used* for further processing in the system of Spight; rather the reject asserts that items 262 and 276 are just user displays and that the currently proposed arrangement makes little sense when put in context with the claim language.

2.   The Examiner's response to the Appellants' argument is that the Examiner has maintained the same rejection throughout the Non-Final Office Action dated 11/09/2007 (pp. 9-10 in regards to claim 1) and in the Final Office Action dated 7/02/2008 (pp. 6-8 in regards to claim 1) but had to make a clarification to the rejection in the Final Office Action dated 7/02/2008 (pp. 2-4) because the Appellant had a misconception and misunderstanding of the Examiner's rejection of claim 1. The Examiner in the rejection of claim 1 has not introduced Clune's steps 210 and 216 after Spight's Fourier transform as the Appellant alleges but rather shows that the two systems are relatively the same [*analogous art*] in that *both have two Fourier transforms to transform image information, both have yield*

processor correlations to process the transformed information, both have inverse

Fourier transforms to perform a Fourier inverse transformation on the yield

processed information, and both display the Fourier inversed information

processed results; *the two systems are relatively the same except that Clune*

operates in the digital domain whereas Spight operates in the light path domain.

      The Examiner in his clarification in the Final Office Action just re-iterated

his rejection from the Non-Final Office Action dated 11/09/2007 wherein Clune's

two initial display means 262 and 276 [which are between Clune's relative

Fourier transforms and yield processor correlation 278] are suggested to be

placed between Spight's Fourier transform lens and yield processor correlation.

These initial displays means 262 and 276, which would be placed after Spight's

Fourier transform lens 30 and 32, would receive Spight's optically transformed

light [e.g. Clune's display means 262 would receive Spight's first optically

transformed light coming from lens 30 and Clune's display means 276 would

receive Spight's second optically transformed light coming from lens 32] and

would provide an initial display of the image data. This adjustment to include

pre-displays or initial displays [these pre-displays which are after each Fourier

transform are considered to be producing the metrics because displays require

matrix's or equivalently arrays of image data (for example Clune's display

processes a 256 by 256 pixel image matrix or array as discussed in col. 5 at lines

50-55) and the Appellant's themselves in page 7 at lines 4-28 of the specification

state that the metric may be a matrix that describes an image] is predictable

because it is well known in the art at the time of the invention to go from the light

path domain to the digital domain and vise versa by using sensors and

processors. The reference Spight even shows that going from the light path

domain to the electrical digital domain is relatively easily done by using sensors

and processors (*see Spight, col. 2, line 68, col. 3, lines 1-6*). Therefore using

Clune's teachings of the pre-display means 262 and 276 of Figure 2B-2 along

with Spight's showing that the optical light path could be displayed using sensors

and processors, it definitely would be obvious to include Clune's pre-display

means [these pre-displays which are after each Fourier transform are considered

to be producing the metrics as discussed above] between Spight's Fourier

transforms lens and yield processor [the rejection is asserting that metric's from

initial pre-displays 262 and 276 would be used for further processing in Spight's

yield processor] in order to display the image after being transformed to improve

the validation for the correction of a misalignment between two images/signals

(see Clune, Fig. 2B-2, col. 5 at lines 63-67). The obviousness rationale

advanced hereinabove is consistent with the criteria articulated in *KSR*

International Co. v. Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007). Also, the

broadest reasonable claim language interpretation doesn't preclude going from

analog / light path domain to digital / electrical domain and back. The Appellant's

themselves in the specification [see specification, page 6 line 29 through page 7

line 5] state that the sensor and processor between the optical transform and the

yield processor may be digital or analog signals which further agrees with the Examiner's obviousness rejection.

The Examiner had and has stated in the obviousness rejection of claim 1 [in the Non-Final and in the Final Office Actions] that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Spight's method by using Clune's teachings *by including a first and second metric generator* (Clune's initial pre-displays 262 and 276 as discussed above) *between Spight's optical transform* [first and second optical transforms 30 and 32 as discussed above] *and Spight's yield processor* [yield processor 34 as discussed above] *in order to display the image after being transformed to improve the validation for the correction of a misalignment between at least two images/signals* (see Clune, Figs. 2A and 2B-2, col. 5, lines 63-67)". This initial pre-display means [these pre-displays which are after each Fourier transform are considered to be producing the metrics as discussed above] would just allow the user to visually see the differences between the initial image information and the correlated processed image information for validation for the correction of misalignment.

Therefore the rejection that has been proposed in the Non-Final and in the Final Office Actions are fully predictable when put in context with the claim language. For these reasons, the Examiner considers these arguments unpersuasive and maintains the previous rejection of claim 1.

3.   *The Appellant argues*, regarding claim 1 (see Appeal Brief, "Claim 1

recites, in part …" in page 9), that Clune's display means 262 and 276 are just

user displays and that they do not generate the claimed metrics and the

rejection's proposed system does not process the claimed metrics to yield a

processed metric and does not perform an inverse optical transform on the

processed metric, and therefore the combination of Spight and Clune cannot,

and does not, teach or suggest claim 1 as claimed.

4.   The Examiner's response to the Appellants' argument is that Spight as

modified by Clune does disclose generating metrics as has been discussed

above in Section I.A.2. Also as discussed above, once the initial pre-displays

262 and 276 [which are placed after Spight's Fourier optical transforms 30 and

32] produce the metrics [matrix's or array's of pixel image data], the metrics from

the initial pre-displays are feed into Spight's yield processor 34 [the digital /

electrical domain pre-display metrics as discussed above in Section I.A.2 are

transformed, to accommodate Spight's optical / light system, into the optical /

light domain as is easily done by one of ordinary skill in the art using sensors and

processors] and wherein Spight's yield processor then processes the initial pre-

display metrics and wherein Spight's inverse optical lens 36 then performs an

inverse optical transform on the processed yield metric as is also discussed

above in the art rejection of claim 1 in Section (9) Grounds of Rejection.

Therefore, the combination of Spight and Clune in the proposed rejection

is fully predictable when put in context with the claim language of claim 1. For

these reasons, the Examiner considers these arguments unpersuasive and

maintains the previous rejection of claim 1.

5.   *The Appellant argues*, regarding claims 2 and 4-6 (see Appeal Brief,

"Dependent claims 2 and 4-6 …" in page 9), that dependent claims 2 and 4-6 are

allowable at least because of their dependence from claim 1 for the reasons

discussed above in Sections I.A.1 and I.A.3.

6.   The Examiner's response to the Appellants' argument is that independent

claim 1 is not in condition for allowance as has been discussed above in Sections

I.A.2 and I.A.4 and in the art rejection of claim 1 in Section (9) Grounds of

Rejection, and therefore dependent claims 2 and 4-6 are also not in condition for

allowance at least because of their dependence from 1 [also see the discussions

in regards to claims 2 and 4-6 above in Section (9) Grounds of Rejection]. For

these reasons, the Examiner considers these arguments unpersuasive and

maintains the previous rejection of claims 2 and 4-6.

B. **Claims 8, 9 and 11-13**

1.   *The Appellant argues*, regarding claim 8 (see Appeal Brief, "Independent

claim 8 recites …" in page 9 through "If, as the rejection now suggests ..." in

page 10), that the combination of Spight and Clune cannot, and does not, teach

or suggest claim 8 for similar reasons as argued for claim 1 in Sections I.A.1 and

I.A.3 above.

2.   The Examiner's response to the Appellants' argument is that independent

claim 8 is the corresponding system claim to claim 1 and therefore claim 8 is not

in condition for allowance for the similar reasons as discussed above in Sections

I.A.2 and I.A.4 in regards to claim 1 [also see the discussions in regards to claim

8 above in Section (9) Grounds of Rejection]. For these reasons, the Examiner

considers these arguments unpersuasive and maintains the previous rejection of

claim 8.

3.   *The Appellant argues,* regarding claims 9 and 11-13 (see Appeal Brief,

"Dependent claims 9 and 11-13 ..." in page 10), that dependent claims 9 and 11-

13 are allowable at least because of their dependence from claim 8 for the

reasons discussed above in Section I.B.1.

4.   The Examiner's response to the Appellants' argument is that independent

claim 8 is not in condition for allowance as has been discussed above in Section

I.B.2 and in the art rejection of claim 8 in Section (9) Grounds of Rejection, and

therefore dependent claims 9 and 11-13 are also not in condition for allowance at

least because of their dependence from 8 [also see the discussions in regards to

claims 9 and 11-13 above in Section (9) Grounds of Rejection]. For these

reasons, the Examiner considers these arguments unpersuasive and maintains

the previous rejection of claims 9 and 11-13.

C. Claim 15

1.   *The Appellant argues*, regarding claim 15 (see Appeal Brief, "Independent

claim 15 recites …" in page 10 through "If, as the rejection now suggests ..." in

page 11), that the combination of Spight and Clune cannot, and does not, teach

or suggest claim 15 for similar reasons as argued for claim 1 in Sections I.A.1

and I.A.3 above.

2.   The Examiner's response to the Appellants' argument is that independent

claim 15 is the corresponding means plus function claim to claim 1 and therefore

claim 15 is not in condition for allowance for the similar reasons as discussed

above in Sections I.A.2 and I.A.4 in regards to claim 1 [also see the discussions

in regards to claim 15 above in Section (9) Grounds of Rejection]. For these

reasons, the Examiner considers these arguments unpersuasive and maintains

the previous rejection of claim 15.

D. **Claim 16**

1.   *The Appellant argues*, regarding claim 16 (see Appeal Brief, "Independent

claim 16 recites …" in page 11 through "If, as the rejection now suggests ..." in

page 11), that the combination of Spight and Clune cannot, and does not, teach

or suggest claim 16 for similar reasons as argued for claim 1 in Sections I.A.1

and I.A.3 above.

2.   The Examiner's response to the Appellants' argument is that independent

claim 16 is a corresponding method claim to claim 1 and therefore claim 16 is not

in condition for allowance for the similar reasons as discussed above in Sections

I.A.2 and I.A.4 in regards to claim 1 [also see the discussions in regards to claim 16 above in Section (9) Grounds of Rejection]. For these reasons, the Examiner considers these arguments unpersuasive and maintains the previous rejection of claim 16.

E. **Claims 17 and 18**

1.   *The Appellant argues*, regarding claim 17 (see Appeal Brief, "Independent claim 17 recites ..." in page 12 through "If, as the rejection now suggests ..." in page 12), that the combination of Spight and Clune cannot, and does not, teach or suggest claim 17 for similar reasons as argued for claim 1 in Sections I.A.1 and I.A.3 above.

2.   The Examiner's response to the Appellants' argument is that independent claim 17 is a corresponding system claim to claim 1 and therefore claim 17 is not in condition for allowance for the similar reasons as discussed above in Sections I.A.2 and I.A.4 in regards to claim 1 [also see the discussions in regards to claim 17 above in Section (9) Grounds of Rejection]. For these reasons, the Examiner considers these arguments unpersuasive and maintains the previous rejection of claim 17.

3.   *The Appellant argues*, regarding claim 18 (see Appeal Brief, "Dependent claim 18 ..." in page 12), that dependent claim 18 is allowable at least because of its dependence from claim 17 for the reasons discussed above in Section I.E.1.

4.   The Examiner's response to the Appellants' argument is that independent

claim 17 is not in condition for allowance as has been discussed above in

Section I.E.2 and in the art rejection of claim 17 in Section (9) Grounds of

Rejection, and therefore dependent claim 18 is also not in condition for allowance

at least because of its dependence from 17 [also see the discussions in regards

to claim 18 above in Section (9) Grounds of Rejection]. For these reasons, the

Examiner considers these arguments unpersuasive and maintains the previous

rejection of claim 18.

II.   **Second Ground of Rejection – Claims 3 and 10 are rejected under 35 U.S.C.**

103(a) as being unpatentable over Spight, as modified by Clune, as applied to

claims 1 and 8 above, and further in view of Evans.

A. **Claim 3**

1.   *The Appellant argues*, regarding claim 3 (see Appeal Brief, "As shown

above, the combination …" in page 13), that dependent claim 3 is allowable at

least because of its dependence from claim 1 for the reasons discussed above in

Sections I.A.1 and I.A.3.

2.   The Examiner's response to the Appellants' argument is that independent

claim 1 is not in condition for allowance as has been discussed above in Sections

I.A.2 and I.A.4 and in the art rejection of claim 1 in Section (9) Grounds of

Rejection, and therefore dependent claim 3 is also not in condition for allowance

at least because of its dependence from 1 [also see the discussions in regards to

claim 3 above in Section (9) Grounds of Rejection]. For these reasons, the
Examiner considers these arguments unpersuasive and maintains the previous
rejection of claim 3.

B. Claim 10

1.   *The Appellant argues*, regarding claim 10 (see Appeal Brief, "As shown
above, the combination ..." in page 13), that dependent claim 10 is allowable at
least because of its dependence from claim 8 for the reasons discussed above in
Section I.B.1.

2.   The Examiner's response to the Appellants' argument is that independent
claim 8 is not in condition for allowance as has been discussed above in Section
I.B.2 and in the art rejection of claim 8 in Section (9) Grounds of Rejection, and
therefore dependent claim 10 is also not in condition for allowance at least
because of its dependence from 8 [also see the discussions in regards to claim
10 above in Section (9) Grounds of Rejection]. For these reasons, the Examiner
considers these arguments unpersuasive and maintains the previous rejection of
claim 10.

For all the above reasons, the Examiner maintains the previous rejection
of claims 1-6, 8-13, and 15-18 because claims 1-6, 8-13, and 15-18 are not
allowable over the cited prior art.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Bernard Krasnic (Examiner)   Examiner, Art Unit 2624

/Bernard Krasnic/

January 27, 2009

Conferees:

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